

## Limit of Wait for Waiting Wife of a Missing Person

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### Abstract

*Marriage is a sacred legal contract in Islam. The Prophet (PBUH) has declared it compulsory (wājib) for both man and woman. It is considered half of religion, while the remaining half can be saved by taqwā. Unfortunately when this relation breaks or is lost all of a sudden, then women and kids suffer in each financial, physical and social spheres of life. A woman feels insecure and confused in case her husband is missing and no news or whereabouts of him are known to anyone. The main purpose of the present research is to overcome the problem of uncertainty and hardships created by this situation for the suffering wife and her progeny and to illustrate that the Islamic shari'ah has discussed the issue amply and has provided the sufferer her due rights in the absence of her husband.*

**Keywords:** Missing persons and Islam, Limit of wait for the wife of a missing person, Rights of the wife of a missing person

Human is social by nature and he needs companions. Right from his birth, when he opens his eyes, he finds himself in a family. The ratio of social relations continues to expend with the time and he gets to introduce to the society, tribe, village, town, city, nation and a cultural and political system as he gets close to other humans. In short he is dependent upon others from birth till death in many fields such as food, clothing, lodging and survival etc. All that we can notice from the charismatic deeds of modern technological advancement would have not been possible without the social behavioral attitudes of humans.

But unfortunately it is also true that our contemporary era has become full of numerous problems for humanity both at the global and national levels. In our beloved country Pakistan, target killing, kidnapping and missing persons are now a common phenomenon which has led the society into the crises of anxiety, confusion, depression and wastage of souls and wealth.

In these crises, most effected human being is a woman who has lost her male family members and meanwhile does not have any moral and financial support by any other family member or relative etc. Furthermore, due to societal constraints a woman can neither remarry nor can stabilize her financial condition by asking for pension. In addition, she does not have a right to ask for her share in inheritance of her husband, despite the fact that Islam does grant her this right. In this situation it is not fair to deny her rights, which her religion has granted her. In the Holy Quran the rights of women have been described and especially elaborated in many chapters in the matters related to them. As Allah says:

”وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا”<sup>1</sup>

“And it is among His signs that He has created for you wives from your selves”.

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The verse clearly highlights that on this earth every human being has its couple. Man and woman are the two prime pillars of human society, each of them has its own identity as well as personality. They are shouldering the great responsibility of building the human society jointly. The coordination of man and woman shapes the family. Interestingly, nature has gifted cross inclined emotions in each one and then each desires for the other to accomplish the chapter of his life. As an undeniable fact, a man cannot survive as a man without woman and vice versa. Keeping this basic fact in view, Islam has therefore not appreciated the celibacy but instead has incited to live a marital life. The guardians are directed to arrange marriages of their marriageable boys and girls. The present article addresses the question of how a wedded “single” woman can live in this world alone. Besides, how long she should wait in case her husband disappears?<sup>2</sup> Basically, the objective of this paper is to provide knowledge about rights and limit of wait for waiting wife of a missing person according to Shari’ah.

### Meanings of “Missing Person”

“Missing person” in Arabic is called *mafqud al khabar*. Stemming out of the root *fqd* it signifies the loss of any human about which no information is available. Its root also applies to the wastage of books and other belongings.

“فَقَدَ الشَّيْءُ يَفْقُدُهُ فَقْدًا وَفُقِدَانًا وَفُقُودًا”<sup>3</sup>

“To fail to find or to lose something, its infinitive *faqdan*, *fuqdanan* or *Faqudan* all denote the sense of a missing thing or to have lost something”.

The same nuance has occurred in Sūrah Yūsuf:

“قَالُوا نَفَقْدُضُوا عَ الْمَلِكِ”<sup>4</sup>

“They said we are missing bowl of the king”.

“اِفْتَقَدْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَيْلَةً أَيْ لَمْ أَجِدْهُ”<sup>5</sup>

‘Āyisha (RA) says:

“One night I found Prophet (PBUH) missing, the meaning of which is that I could not find him”.

### Literal Meaning of “Missing Person”

Literal meaning of missing person does not occur in the Qur’ān and ḥadīth, however it is found in the discourses of the companions of the Prophet (PBUH), tābi’ūn and the four a’immah as under:

### According to Hanfiyyah

“A person who is missing from his family, country or has been kidnapped by the enemy for long time and no news/information about him exists whether he is alive or dead”<sup>6</sup>

### Mālikis defines it as:

“A person who is missing and no certain information about him is in circle in the general public, neither can he be detected amongst the prisoners. In case he has been kidnapped, achievement of information about him will be impossible”<sup>7</sup>

### Imām Shāfi'ī Writes:

“A person who has lost and there are no information about him, whether he is in travel or is present in any war or that he was present in that ship before it has sunk”<sup>8</sup>

### Hanbalis expressed:

“If he is misplaced due to uncertainty and the family doesn't know whether he is alive or dead”<sup>9</sup>

### Term and conditions

Majority of scholars did not explain the details of a missing person such as in which area and in which conditions a person was lost except Mālikīyah who have set up the following four term and conditions:

1. If a person is lost in the Muslim country and in the time of peace.
1. A person who is lost or has been kidnapped in a non-Muslim the country.
2. A person who is lost in a battle between Muslim countries.
3. A person who is lost in a battle between Muslims and none Muslims.<sup>10</sup>

Zaynuddin further elaborates these conditions in his book *al-Baḥr al-Rā'iq*:

“If a person is lost in a Muslim country in the time of peace, the Shari'ah in this case orders that his belongings will not be distributed among inheritors but to wait. Many scholars have different views about the time of disappearance ranging between 120-80 years etc., as after such a long duration a person cannot possibly live, and as because his property is sure and his death is unsure, a matter of doubt therefore cannot supersede a matter based on surety).”<sup>11</sup>

According to caliph 'Umar (RA) in this situation the wife of a missing person can remarry after wait of four years. The consensus of caliph 'Uthman (RA) and other companions presented the same decision. The reason is to resolve the problem of the wife of missing person because if Sharīah does not allow remarrying, there are possibilities of woman reaching old age or she may indulge in immoral habits.

In second condition, until the death of husband is not proved and declared, the wife will not be “Ḥalāl” for another man. In addition to it, his inheritance will also not be distributed among inheritors, because a person who is missing or is lost or has been kidnapped in a non-Muslim country is to be considered as alive.

About third condition, the Shari'ah Muslim countries then no limit will be fixed regarding his search and Investigation until they become hopeless about him but when they become hopeless then the decision will be taken about his death and the wife of missing person can marry again after spending “iddah” of four months and ten days.

In fourth condition, scholars kept the limit of one year for search and investigation, but after that his wife is halal for another person and his inheritance will also be distributed , and if he is disappeared during a battle then Limit of wait:

Imams differ regarding the time limit of wives, which is cited here with evidences.

## First Statement

After missing her husband a woman will have to wait for “Four years” and then her husband’s inheritance will be distributed among inheritors. Furthermore, after spending “Four years”, she is also bound to spend four months and ten days of “‘iddah” then she is allowed to remarry according to Malikis, Shāfi’is and Ḥanbalis.

## Evidences

”عَنِ الْمَغِيرَةِ بْنِ شُعْبَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: ”امْرَأَةُ الْمَفْقُودِ، امْرَأَتُهُ حَتَّى يَأْتِيَهَا الْخَبَرُ“<sup>12</sup>

“Mughirah bin Shu’bah narrated that Messenger of Allah (PBUH) said that wife of a missing person will remain his wife until his death is declared.”

”أَنَّ عُمَرَ بْنَ الْخَطَّابِ، قَالَ: أَيُّمَا امْرَأَةٍ فَقَدَتْ زَوْجَهَا، فَلَمْ تَدْرِ أَيْنَ هُوَ، فَإِنَّهَا تَنْتَظِرُ أَرْبَعَ سِنِينَ، ثُمَّ تَعْتَدُ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تُحَلُّ“<sup>13</sup>

“Umar bin al-Khaṭṭāb says, any woman whose husband has disappeared and she does not have any information about him, she has to wait for him for a period of four years, then she has to spend another four months and ten days in ‘iddah and after that she can get married to someone else”.

”عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ عُمَرَ، وَعُثْمَانَ رَضِيَ اللَّهُ عَنْهُمَا، قَالَا: ”امْرَأَةُ الْمَفْقُودِ تَرَبِّصُ أَرْبَعَ سِنِينَ، ثُمَّ تَعْتَدُ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تُنْكَحُ“<sup>14</sup>

“Sa’id bin al-Musayyib narrated that ‘Umar and Uthman (may Allah be pleased with them) said: the wife of a missing person has to wait for him for four years, then she has to spend a period of four months and ten days in ‘iddah, and then can she remarry”.

”وروى عبد الرزاق عن ابن شهاب قال إن عمر وعثمان قضيا في ميراث المفقود يقسم من يوم تمضي الأربع سنوات على امرأته وتستقبل عدتها أربعة أشهر وعشراً.“<sup>15</sup>

“Abdul Razzāq narrated from Ibn-e- Shahāb that ‘Umar (R.A) and Uthman (R.A) issued ruling on the distribution of the inheritance of a missing person after his wife has waited for him for four years and have also completed a tenure of four months and ten days as ‘iddah time”.

## Second Statement

Imam Abu Ḥanīfa and Imam Shāfi’i have opined that the wife of a missing person will have to wait for 120 or 100 years for her husband, while according to some other scholars the period of wait for a wife ranges between 90 to 70 years.

## Evidences:

”عن علي رضي الله عنه أنه قال في زوجة المفقود إنها لا تنزوج“<sup>16</sup>

“It has been reported from ‘Ali (RA) in case of the wife of a missing person that she will not marry”.

Further he says that:

”قَالَ عَلِيُّ بْنُ أَبِي رَاضٍ رَضِيَ اللَّهُ عَنْهُ: ”لَيْسَ الَّذِي قَالَ عُمَرُ رَضِيَ اللَّهُ عَنْهُ بِشَيْءٍ وَهِيَ امْرَأَةُ الْأَوَّلِ حَتَّى يَأْتِيَهَا يَقِينٌ مَوْتُهُ أَوْ طَلَاقُهَا“<sup>17</sup>

‘Ali (RA) says that what ‘Umar (RA) has expressed is not valid. The lady should wait till the time the death of her missing husband is confirmed or he giving divorce to her reaches her.”

In al-Sunan al-Kubrā ‘Ali (RA) says about such a woman:

”وروى عنه: هي امرأة ابتليت فلتصبر حتى يستبين موت أو طلاق”<sup>18</sup>

“And it has been reported from him that she is the woman put to test, so she should show constraint till the time the death of her husband or the news of divorce by him reaches her”.

Therefore, it is stipulated by analogy that the life of a missing person is sure and at the same time his certain death is also possible. However, only a firm stand in accordance with the situation will bear fruitful results. The correct point of view in our opinion in this regard is the fatwā of ‘Umar (RA) and the stand of Mālikī, Shāfi’i and Ḥanbali schools of thought, which is that a woman should be allowed second nikāḥ but after spending the duration of four years four months and ten days.

### Reasons

1. Regarding this issue ‘Umar, ‘Uthmān, ‘Abdullah bin ‘Abbas, ‘Abdullah bin ‘Umar, ‘Abdullah bin Zubayr and a number of other companions (may Allah be pleased with them all) have the same opinion.
2. Three grand Imāms Mālik, Shāfi’i and Aḥmad bin Ḥanbal have also endorsed opinion of the above-mentioned companions.
3. Some other scholars have reported ‘a consensus’ of companions on the matter that wife of a missing person should wait only for four years.
4. Islamic Shari’ah determines easy solutions for complicated matters and issues. If the wife of a missing person will wait for seventy years, she will have to face a number of severe difficulties and problems. This is completely in consonance with the spirit of daḥ al-ḥaraj “removing away the hardships”.
5. Due to lack of sources in the past, search for a missing person would be very hard and difficult task. The proper use of the contemporary advanced technology has however made the job easier.
6. According to ‘Allāmah ‘Abd al-Ḥayy al-Ḥanafī, the fatwā issued by Imam Mālik with regard to the issue of the limit of wait for wife of a missing person is absolutely sound.<sup>19</sup>

### Inheritance

As far as the inheritance of a missing person is concerned, various scholars have the opinion as under. According to Imam Abū Ḥanīfah:

“A person who is lost cannot become successor to anyone and at the same time others will also not be able to prove his “will/testament”, because for inheritance and will it is mandatory that inheritor for whom the will is written must be alive. On the other part of situation, a person who is missing and we don’t have any information about him that whether he is alive or dead, cannot become inheritor and no one else can become inheritor of him”.<sup>20</sup>

Majority of other scholars have opined that missing persons will inherit from others but others will not become his inheritors. Their point of view is based on the presumption that a missing person's life is believable and his death is unbelievable so we cannot take any decision.<sup>21</sup>

Followers of Imam Ḥanbal have explained the detail of this issue by applying two conditions to it:

1. A person is lost in a situation where the chances of his life are impossible, for example: he was lost in a dangerous spot or during the battle. In this condition his inheritance will not be distributed until his death is assured. Similarly when his death is assured, his inheritance will be distributed among his inheritors.
2. A person is lost in a situation where the chances of his life are possible, for instance he is lost on any business or luxury trip or has gone somewhere for getting education.<sup>22</sup> In this situation, we find two judgements:
  - His property will not be distributed and his wife will not remarry till his death is ascertained or such a long time has passed (in which living of a human comes practically impossible) and there are no news about him. In this situation the ruler of the time would decide the matter in accordance with his "Ijtihād". Imam Abū Yūsuf has also validated this opinion.
  - According to 'Abdul Mālīk bin Mājihūn "Missing person's wife will wait from the time of missing, till ninety years because possibly no one can live till so long.

Majority of the scholars have however based the limit of this wait to seventy years, derived from a prophetic saying, which says:

”إِنَّمَا أَعْمَارُ أُمَّتِي مَا بَيْنَ السِّتِينَ إِلَى السَّبْعِينَ، وَأَقَلُّهُمْ مَنْ يُجَاوِزُ ذَلِكَ“<sup>23</sup>

“The ages of my Ummah will be between sixty to seventy years, only a few of them will exceed this limit”.

## Conclusion

Allowing waiting wives of missing persons to remarry (if they want to) by scholars of Islam is a good decision. In this way they can keep their sanctity and can stay away from the hardships of life. Writings of the scholars further approve that a woman can revise her second nikāḥ' after expiry of the time limit of wait, which is four years four months and ten days. Furthermore, no one may inherit the missing person's property during the period of time before the person is declared as dead. Once this period of time is over then the missing person's estate can be distributed amongst his living inheritors. If any of the missing person's relatives dies during the period of time before the missing person is officially declared dead, then the missing person's share of the inheritance will be legally transferred to his/her estate in full. The missing persons are treated like any other living inheritors.

## Endnotes

<sup>1</sup> Sūrat al-Rūm, 30:21

<sup>2</sup> Though Islamic Sharī'ah presents a proper and clear solution to this issue. For details, see Badrul Ḥasan Qāsimi, *Intizār Zawjat al-Mafqūd*, Rabi'at al-Ālam al-Islāmi, 1992, Pg.3

<sup>3</sup> Ibn Manẓūr, *Lisān al-ʿArab*, Dār al Fikr, Beirut, 1956, Vol: 3, Pg.337

<sup>4</sup> Sūrat Yūsuf, 12:72

<sup>5</sup> Muslim, *al-Ṣaḥīḥ*, Nūr Muḥammad Kutub Khāna, 1991, Vol: 2 ,Pg.213

<sup>6</sup> Ibn Nujaym al Ḥanafī, *Al-Baḥr al-Rāʾiq*, Dār al- Maʾrifah, Beirut, 1991, Vol: 5, Pg.176

<sup>7</sup> Aḥmad al-Dardīr al-ʿAdawi, *Al-Sharḥ al-Kabīr*, Dār al Kutub al-miṣriyyah, Beirut,1990, Vol: 10, Pg. 122

<sup>8</sup> Sulaymān al-Jamāl, *Ḥāshiyat al Jamāl ʿalā ʾI-Minhāj*, Dār al Fikr, Beirut, 1956, Vol: 7, pg. 506

<sup>9</sup> Ibn Qudāmah al-Ḥanbali, *Al-Mughni*, Dār al-Fikr, Beirut, 1406, Vol: 9, Pg. 131

<sup>10</sup> Aḥmad al-Dardīr al-ʿAdawi, *Al-Sharḥ al-Kabīr*, Dār al Kutub al-Miṣriyyah, Beirut,1990, Vol: 10, Pg. 122

<sup>11</sup> Ibn Nujaym al Ḥanafī, *Al-Baḥr al-Rāʾiq*, Dār al- Maʾrifah, Beirut, 1991, Vol: 5, Pg.178.

<sup>12</sup> Abul Ḥasan ʿAli bin ʿUmar, *Al-Sunan liddārQutni*, Dār al Maʾrifah, Beirut, 1966, Vol: 2, Pg. 421

<sup>13</sup> Malik bin Anas, *Al-Muʾaṭṭā*, Bāb ʿIddatu ʾilatī tafaqqadat Zawjahā, Mir Muḥammad Kutub Khāna, 1219, Pg. 432

<sup>14</sup> Abū Ḥafṣ ʿUmar al-Shāfiʿi, *Al-Badr al-Munīr*, Dār al-Ḥujurāt, Riyāḍ, 2004, Vol: 8, Pg.228

<sup>15</sup> Abū Bakr al-Bayhaqī, *Al-Sunan al-Kubrā*, Maktabah Dār al-Bāz, Makkah, 1944, Vol:6, Pg:158

<sup>16</sup> *Al-Sunan al-Kubrā*, Vol: 7, Pg. 444

<sup>17</sup> *Al-Sunan al-Kubrā*, Vol: 7, Pg. 444

<sup>18</sup> *Al-Sunan al-Kubrā*, Vol: 6, Pg.158

<sup>19</sup> Abdul Ḥayy, *ʿUmdat al-Rāyah*, Nūr Muḥammad Kutub Khana, Karachi,1991, Vol:2, Pg:312

<sup>20</sup> ʿAlāuddīn ʿAbdul ʿAziz, *Kashf al-Asrār*, Dār al Kutub al-ʾIlmiyyah ,Beirut,1997, Pg.1098

<sup>21</sup> Ibn Qudāmah, *Rawḍat al-Nazar* ,Dār al Fikr, Damascus,1984, Vol:1, Pg.389

<sup>22</sup> Ibn Qudāmah, *Al-Mughni*, Dār al Fikr, Beirut, 1406, Vol: 6, Pg. 321

<sup>23</sup> Abū ʿIsā al-Trimidhi , *Al-Jāmiʿ* , Beirut,1956, Ḥadīth No:3502